

2012 WL 1647867 (Ill.Cir.) (Trial Pleading)
Circuit Court of Illinois.
County Department
Law Division
Cook County

Richard JONES, Special Administrator of the Estate of Alice Grayer, deceased, Plaintiff,
v.

THE UNIVERSITY OF CHICAGO MEDICAL CENTER, Transitional Care Management
LLC d/b/a Evergreen Healthcare Center, Little Company of Mary Hospital, and Advocate
Health and Hospital Corporation d/b/a Advocate Christ Medical Center, Defendants.

No. 2012-L-004587.
April 30, 2012.

Plaintiff Demands a Jury Trial

Complaint at Law

Muslin & Sandberg, [Craig M. Sandberg](#), 19 S. LaSalle Street, Suite 700, Chicago, Illinois 60603, (312) 263-7249, Firm ID
No. 43736.

RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, files her original Complaint at Law.

I. Introduction

1. This is an action by the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, against the defendants seeking compensatory damages.

II. Parties

A. Plaintiff

2. RICHARD JONES is a citizen of the State of Illinois and resides in Cook County. ALICE GRAYER was a citizen of the State of Illinois and residing in Cook County at the time of her injury and death.

B. Defendants

3. THE UNIVERSITY OF CHICAGO MEDICAL CENTER ("UCMC") is a corporation that is incorporated in the State of Illinois. UCMC has its principal place of business located at 5841 S. Maryland Avenue, Chicago, Illinois 60637.

4. TRANSITIONAL CARE MANAGEMENT LLC ("TCM") is a company that is organized under the law of the State of Illinois. Defendant owns, operates, staffs, and/or manages a rehabilitation and skilled nursing center known as EVERGREEN HEATHCARE CENTER, which is located at 10124 South Kedzie Avenue, Evergreen Park, Illinois 60805.

5. LITTLE COMPANY OF MARY HOSPITAL (“LCMH”) is a corporation that is incorporated in the State of Illinois. Defendant operates LITTLE COMPANY OF MARY HOSPITAL, which is located at 2800 West 95th Street, Evergreen Park, Illinois 60805.

6. ADVOCATE HEALTH AND HOSPITAL CORPORATION (“AHHC”) is a corporation that is incorporated in the State of Illinois. Defendant operates ADVOCATE CHRIST MEDICAL CENTER, which is located at 4440 West 95th Street, Oak Lawn, Illinois 60453.

7. For purposes of this Complaint, UCMC, TCM, LCMH, and AHHC will be referred to collectively as “Defendants.”

III. Jurisdiction

8. The court has jurisdiction over the lawsuit because the action arises under state law.

IV. Venue

9. Venue is proper in the Circuit Court of Cook County, Illinois.

V. Vicarious Liability

10. Whenever in this petition it is alleged that a defendant did any act or thing, it is meant that the defendant's agents, officers, servants, borrowed servants, employees or representatives did such act or thing and that the time such act or thing was done, it was done with the full authorization or ratification of defendant or was done in the normal and routine course and scope of employment of defendant's officers, agents, servants, borrowed servants, employees or representatives. The principal is vicariously liable for the acts of the agent because of an employer employee status, agency by estoppel, ostensible agency or borrowed servant doctrine.

VI. Facts

11. On or about April 17, 2010, ALICE GRAYER was admitted to UCMC with medical complaints.

12. Upon information and belief, ALICE GRAYER advised UCMC that she may have a hemostatic abnormality; she was not able to take aspirin due to bleeding issues.

13. On or about April 19, 2010, ALICE GRAYER was discharged from UCMC with a prescription for heparin despite the same being contraindicated for this individual.

14. On or about April 19, 2010, ALICE GRAYER was admitted to EVERGREEN HEATHCARE CENTER.

15. While at EVERGREEN HEATHCARE CENTER, ALICE GRAYER complained of abdominal pain and having a “knot” in her stomach that was painful and getting worse.

16. On or about April 28, 2010, ALICE GRAYER suffered a cardiac arrest at EVERGREEN HEALTHCARE CENTER.

17. On or about April 28, 2010, ALICE GRAYER was transferred from EVERGREEN HEALTHCARE CENTER and admitted to LITTLE COMPANY OF MARY HOSPITAL.

18. On or about April 30, 2010, ALICE GRAYER was transferred from LITTLE COMPANY OF MARY HOSPITAL to ADVACATE CHRIST MEDICAL CENTER.

19. On April 30, 2010, ALICE GRAYER died at ADVACATE CHRIST MEDICAL CENTER.

20. According to the Certificate of Death, ALICE GRAYER died of hypotension and a ruptured abdominal aortic aneurysm ("RAAA").

21. That at all times relevant herein, ALICE GRAYER was in the exercise of due care and caution for her own safety and well-being.

22. This action is filed within two (2) years of when plaintiff knew or reasonably should known that an injury has occurred and that the alleged injury may have been wrongfully caused.

Count I (Wrongful Death - The University of Chicago Medical Center)

23. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-two (22) with the same force and effect as though fully set forth herein.

24. That at all times complained of herein, UCMC, by and through their agents, servants, and/or employees, had a duty to avoid needlessly endangering patients.

25. That at all times complained of herein, UCMC had an independent duty to assume responsibility for the care of their patients.

26. That at all times complained of herein, UCMC had a duty to exercise that degree of care, skill, and caution in administering medical treatment and services to patients, including ALICE GRAYER, that a reasonably licensed health care facility operating in the same or similar community would exercise under the same or similar circumstances.

27. Defendant breached their duties and was negligent in one or more of the following respects:

- a. Carelessly and negligently failed to properly care for ALICE GRAYER'S condition.

28. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions of the defendant, the decedent, ALICE GRAYER, suffered significant and permanent injuries, which resulted in her death on April 30, 2010.

29. That RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, and brings this action pursuant to the Wrongful Death Act of the State of Illinois [740 ILCS 180/2.1](#).

30. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

31. Plaintiff's damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

Count II (Survival - The University of Chicago Medical Center)

32. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-seven (27) of Count I with the same force and effect as though fully set forth herein.

33. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the defendant, ALICE GRAYER suffered significant and permanent injuries.

34. This cause of action has survived the plaintiff's decedent and accrued to the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, pursuant to the Survival Act of the State of Illinois [755 ILCS 5/27-6](#).

35. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

36. Plaintiff's damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

Count III (Wrongful Death - Transitional Care Management LLC)

37. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-two (22) with the same force and effect as though fully set forth herein.

38. That at all times complained of herein, TCM, by and through their agents, servants, and/or employees, had a duty to avoid needlessly endangering patients.

39. That at all times complained of herein, TCM had an independent duty to assume responsibility for the care of their patients.

40. That at all times complained of herein, TCM had a duty to exercise that degree of care, skill, and caution in administering medical treatment and services to patients, including ALICE GRAYER, that a reasonably licensed health care facility operating in the same or similar community would exercise under the same or similar circumstances.

41. Defendant breached their duties and was negligent in one or more of the following respects:

- a. Carelessly and negligently failed to properly care for ALICE GRAYER'S condition.

42. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions of the defendant, the decedent, ALICE GRAYER, suffered significant and permanent injuries, which resulted in her death on April 30, 2010.

43. That RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, and brings this action pursuant to the Wrongful Death Act of the State of Illinois [740 ILCS 180/2.1](#).

44. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

45. Plaintiffs damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

Count IV (Nursing Home Care Act - Transitional Care Management LLC)

46. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-two (22) with the same force and effect as though fully set forth herein.

47. Upon entering the defendant's facility, ALICE GRAYER entrusted herself entirely to the care of TCM, by and through its duly authorized agents, servants and/or employees.

48. That at all times complained of herein, TCM, by and through its agents, servants, and/or employees, had a duty to avoid needlessly endangering residents.

49. That at all times complained of herein, TCM had an independent duty to assume responsibility for the care of their residents.

50. At all times relevant herein, TCM had a duty to exercise reasonable care to avoid injury to patrons, and the reasonableness of such care is to be assessed in the light of the patron's physical and mental condition.

51. At all times relevant to this Complaint, there was in full force and effect, a statute commonly known as the Nursing Home Care Act, as amended (the "Act"), [210 ILCS 45/1-101, et seq.](#)

52. At all times relevant to the Complaint, EVERGREEN HEALTHCARE CENTER, operated by TCM, was a "facility" as defined by § 45/1-113 of the Act and was subject to the requirements of the Act and regulations of the Illinois Department of Public Health promulgated by the Act.

53. At all times relevant to the Complaint, TCM was subject to the requirements of [42 U.S.C. § 1396r \(1990\)](#) et seq. as amended by the Omnibus Budget Reconciliation Act of 1987 ("OBRA").

54. At all times relevant to the Complaint, TCM was subject to the requirements of Volume 42, Code of Federal Regulations, Part 483 setting forth Medicare and Medicare Requirements for Long Term Facilities ("OBRA REGULATIONS"), as effective on October 1, 1990.

55. At all times relevant to the Complaint, EVERGREEN HEALTHCARE CENTER, operated by TCM, was a "nursing" facility as defined by [42 U.S.C. § 1396r](#).

56. During her residency at EVERGREEN HEALTHCARE CENTER, ALICE GRAYER was forced to submit herself to **elder neglect**, failure of the facility to attend to her physical care needs, and failure of the facility to maintain appropriate nutritional and hydrational status.

57. That at all times material, TCM was doing business as EVERGREEN HEALTHCARE CENTER, and was a "facility" as defined by Section 1-112 of the Nursing Home Care Act and was subject to the requirements of the Act and the regulations of the Illinois Department of Public Health promulgated pursuant to the Act.

58. That on and before June 2009, and at all times relevant, the defendant was subject to the federal Nursing Home Reform Act ("NHRA"), enacted as part of the Omnibus Budget Reconciliation Act of 1987 ("OBRA"), and its implementing regulations.

59. Pursuant to the Nursing Home Care Act, at all times relevant, TCM had a duty to refrain from intentionally or negligently causing injury to its residents, including ALICE GRAYER.

60. That at all times relevant, TCM accepted ALICE GRAYER as a patient, and agreed to render competent and adequate care, diagnosis, treatment, and services to ALICE GRAYER, by and through its physicians, nurses, employees, agents, actual and/or apparent, for pecuniary consideration.

61. That at all times relevant, TCM accepted ALICE GRAYER as a patient, and agreed to render competent and adequate nursing care services in conjunction with her illness/condition, and TCM, by and through its physicians, nurses, employees, agents, actual and/or apparent, undertook to render such care, diagnosis, treatment, and services, for pecuniary consideration.

62. That at all times relevant herein, ALICE GRAYER had entrusted herself to the care of TCM and its various physicians, nurses, employees, agents, actual and/or apparent. TCM and its physicians, nurses, employees, agents, actual and/or apparent, to render all nursing care, medical care and/or assessments, services, and treatments provided by those institutions similarly licensed and accredited under like and similar circumstances, in accordance with the accepted standards of medical, hospital, and nursing practices and opinions then prevailing, including but not limited to all policies and procedures and all requirements for licensure and accreditation in Illinois.

63. During the period of ALICE GRAYER'S residency at EVERGREEN HEALTHCARE CENTER, Defendant violated the Act by the following negligent acts and omissions and statutory violations:

(a) In violation of §483.75 of the OBRA REGULATIONS, failed to administer the facility in a manner to attain or maintain the highest practical, physical, mental and psychological well being of each resident including ALICE GRAYER;

(b) In violation of §483.75(b) of the OBRA REGULATIONS, failed to operate and provide services in compliance with all applicable professional standards;

(c) In violation of §483.10(b)(11) of the OBRA REGULATIONS, failed to inform ALICE GRAYER'S family that her physical condition was deteriorating;

(d) In violation of §483.15(a) of the OBRA REGULATIONS, failed to promote care for ALICE GRAYER in a manner and in an environment that maintained or enhanced ALICE GRAYER'S dignity and respect in full recognition of ALICE GRAYER'S individuality;

(e) In violation of §483.25 of the OBRA REGULATIONS, failed to provide ALICE GRAYER with necessary care and services to attain and maintain the highest practicable physical, mental and psychological well-being, in accordance with a comprehensive assessment and plan of care;

(f) In violation of §483.30 of the OBRA REGULATIONS, failed to have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of ALICE GRAYER, as determined by assessments and individual plans of care;

(g) In violation of §483.40(1) of the OBRA REGULATIONS, failed to ensure that ALICE GRAYER'S medical care was appropriately supervised by her physician;

(h) In violation of Ill. Admin. Code tit. 77, § I(c)300.1210(a), failed to provide adequate and properly supervised nursing care and personal care to ALICE GRAYER to meet ALICE GRAYER'S total nursing care and personal care needs;

(i) In violation of Ill. Admin. Code tit. 77, § I(c)300.1210(a), failed to provide ALICE GRAYER restorative and rehabilitative nursing measures to meet her individual care needs;

(j) In violation of Ill. Admin. Code tit. 77, § I(c)300.3240(p), failed to notice ALICE GRAYER'S family of changes in her condition;

(k) In violation of Ill. Admin. Code tit. 77, § I(c)300.3240(a), failed to protect ALICE GRAYER from abuse and **neglect**.

64. The Nursing Home Care Act, as amended, provides as follows

The licensee shall be responsible for costs and attorney's fees to a facility resident whose rights, as specified in part 1 of Article 2 of this Act, are violated (210 ILCS 45/3-602).

65. The Nursing Home Care Act, as amended, provides as follows

“The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agency or employees which injures the residents (210 ILCS 45/3-602).

66. As a direct and proximate result of one or more of the Defendant's statutory violations and negligent acts or omissions, ALICE GRAYER sustained injuries including, but not limited to, deterioration in ALICE GRAYER'S physical and mental condition all of which caused or contributed to her death.

67. This cause of action has survived the plaintiffs decedent and accrued to the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, pursuant to the Survival Act of the State of Illinois 755 ILCS 5/27-6.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays that this Court enter judgment in her favor and against the defendant, awarding compensatory damages in excess of this Court's Fifty Thousand Dollar (\$50,000.00) jurisdictional amount, costs, and attorneys' fees, as well as any other relief this Court deems just and appropriate.

Count V (Wrongful Death - Little Company of Mary Hospital)

68. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-two (22) with the same force and effect as though fully set forth herein.

69. That at all times complained of herein, LCMH, by and through their agents, servants, and/or employees, had a duty to avoid needlessly endangering patients.

70. That at all times complained of herein, LCMH had an independent duty to assume responsibility for the care of their patients.

71. That at all times complained of herein, LCMH had a duty to exercise that degree of care, skill, and caution in administering medical treatment and services to patients, including ALICE GRAYER, that a reasonably licensed health care facility operating in the same or similar community would exercise under the same or similar circumstances.

72. Defendant breached their duties and was negligent in one or more of the following respects:

a. Carelessly and negligently failed to properly care for ALICE GRAYER'S condition.

73. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions of the defendant, the decedent, ALICE GRAYER, suffered significant and permanent injuries, which resulted in her death on April 30, 2010.

74. That RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, and brings this action pursuant to the Wrongful Death Act of the State of Illinois [740 ILCS 180/2.1](#).

75. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

76. Plaintiff's damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

Count VI (Survival - Little Company of Mary Hospital)

77. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through seventy-two (72) of Count V with the same force and effect as though fully set forth herein.

78. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the defendant, ALICE GRAYER suffered significant and permanent injuries.

79. This cause of action has survived the plaintiff's decedent and accrued to the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, pursuant to the Survival Act of the State of Illinois [755 ILCS 5/27-6](#).

80. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

81. Plaintiff's damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

Count VII (Wrongful Death - Advocate Health and Hospital Corporation)

82. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through twenty-two (22) with the same force and effect as though fully set forth herein.

83. That at all times complained of herein, AHHC, by and through their agents, servants, and/or employees, had a duty to avoid needlessly endangering patients.

84. That at all times complained of herein, AHHC had an independent duty to assume responsibility for the care of their patients.

85. That at all times complained of herein, AHHC had a duty to exercise that degree of care, skill, and caution in administering medical treatment and services to patients, including ALICE GRAYER, that a reasonably licensed health care facility operating in the same or similar community would exercise under the same or similar circumstances.

86. Defendant breached their duties and was negligent in one or more of the following respects:

- a. Carelessly and negligently failed to properly care for ALICE GRAYER'S condition.

87. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions of the defendant, the decedent, ALICE GRAYER, suffered significant and permanent injuries, which resulted in her death on April 30, 2010.

88. That RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, and brings this action pursuant to the Wrongful Death Act of the State of Illinois [740 ILCS 180/2.1](#).

89. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

90. Plaintiffs damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

Count VIII (Survival - Advocate Health and Hospital Corporation)

91. Plaintiff repeats, realleges, and incorporates paragraphs one (1) through eighty-six (86) of Count VII with the same force and effect as though fully set forth herein.

92. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the defendant, ALICE GRAYER suffered significant and permanent injuries.

93. This cause of action has survived the plaintiffs decedent and accrued to the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, pursuant to the Survival Act of the State of Illinois [755 ILCS 5/27-6](#).

94. Attached hereto as Exhibit "A" and made a part hereof is an affidavit submitted in compliance with [Section 2-622\(a\)\(2\) of the Illinois Code of Civil Procedure](#).

95. Plaintiff's damages are in excess of Fifty Thousand Dollars (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE the plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, prays this court for damages according to proof and for such other and further relief as this Court deems just.

JURY DEMAND

Plaintiff, RICHARD JONES, Special Administrator of the Estate of ALICE GRAYER, deceased, asserts his rights under the [Article I, Section 13 of the Illinois Constitution](#) and demands, in accordance with Section 5/2-1105 of Illinois Code of Civil Procedure, a trial by jury on all issues.